

MAY 14 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIEZER OSEGUERA-MEDINA,

Defendant - Appellant.

No. 02-30191

D.C. No. CR-01-00056-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted May 5, 2003**
Seattle, Washington

Before: O'SCANNLAIN, GOULD, Circuit Judges, and BOLTON, District
Judge.***

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Susan R. Bolton, United States District Judge for the District of Arizona, sitting by designation.

Defendant-Appellant Eliezer Oseguera-Medina appeals his sentence, imposed following his guilty plea for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). He argues that the prosecutor's refusal to offer him a "fast-track" plea agreement similar to that offered to defendants prosecuted in other districts of the Ninth Circuit violated his due process and equal protection rights.

Oseguera-Medina has submitted no proof that the United States Attorney's Office for the District of Montana engaged in intentional discrimination by declining to institute a fast-track policy akin to that in existence elsewhere, or that the prosecutor's decision to decline to offer him a particular plea was motivated by a discriminatory purpose or intent. Therefore, he has not established a prima facie case of invidious discrimination. *Wayte v. United States*, 470 U.S. 598, 607-08 (1985); *United States v. Estrada-Plata*, 57 F.3d 757, 760-61 (9th Cir. 1995). The decision not to offer Oseguera-Medina a "fast-track" plea and thirty-month sentence was within the prosecutor's discretion. *See United States v. Armstrong*, 517 U.S. 456, 464-65 (1996); *United States v. Palmer*, 3 F.3d 300, 305-306 (9th Cir. 1993). The District Court correctly rejected Oseguera-Medina's argument, and imposed a proper sentence. *United States v. Banuelos- Rodriguez*, 215 F.3d 969, 976-77 (9th Cir. 2000).

AFFIRMED.